



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

JUL 17 2007

William C. Britt
Vice President
Cargill, Inc.
P.O. Box 5724/Lake Office
Minneapolis, MN 55440-5724

Dear Mr. Britt:

I am writing in response to your request that EPA address whether development at the Redwood City Plant Site could be permitted under section 404 of the Clean Water Act. EPA appreciates that Cargill is willing to consider applying for a section 404 permit for its development plans at this site. EPA is aware that Cargill takes the position that this site does not contain waters of the United States regulated under the Clean Water Act. However, EPA believes that it would be much more productive and environmentally beneficial to address development issues through the permit process rather than litigate the complex jurisdictional issues presented at the site.

As you are aware, the U.S. Army Corps of Engineers (USACE) is responsible for deciding whether to issue permits under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act. In the 404 permitting process, EPA provides advice to the USACE with regard to issues within EPA's areas of expertise. Most relevantly for these purposes, EPA provides comments as to the application of the Clean Water Act section 404(b)(1) Guidelines to particular project proposals. EPA provides formal comments to the USACE with regard to the application of the 404(b)(1) Guidelines as part of the USACE permit process. In addition, EPA provides guidance as to the application of the Guidelines to the USACE and the project proponent as part of the USACE's preapplication consultation process. The guidance in this letter is offered as part of Cargill's preapplication consultation with regard to the Redwood City Plant Site.

EPA has substantial familiarity with conditions at the Redwood City Plant Site. For more than forty years, this site has functioned as the final stage of Cargill's salt production operation. It consists of roughly 600 acres of crystallizer beds, roughly 800 acres of ponds (including pickle ponds, brine storage ponds and bittern storage ponds), and roughly 90 acres of fast land. The ponds and crystallizer beds were created in the 1950's by the construction of levees in the wetlands and tidal sloughs on the fringe of San Francisco Bay. The floor of the crystallizer beds has been leveled to facilitate the harvesting of salt. The ponds and crystallizer beds process the concentrated brines delivered to the Plant Site from Cargill's network of evaporation ponds, and store biterms generated by this process. The Plant Site is designed to discharge wastewater to San Francisco Bay through a discharge point regulated by an NPDES permit issued by the

California Regional Water Quality Control Board The construction and operation of the Redwood City Plant Site predates the Federal Water Pollution Control Act of 1972.

EPA believes that a development proposal for the Redwood City Plant Site should focus within the 600 acres of crystallizer beds, as well as the uplands in the immediate vicinity of these beds. The crystallizer beds have been so substantially manipulated that, in their current condition, they provide limited physical, chemical or biological functions when compared with the natural conditions at the site prior to their construction. While it was Cargill (and its predecessor's) activities that led to this suppression of functions, EPA recognizes that the initiation of these actions predates the FWPCA of 1972, and that the continuing impact to functions results from activities inherent in solar salting. In addition, the crystallizer beds are the areas of the Plant Site nearest to existing development; and, hence, farthest from sensitive aquatic habitats. Development of other portions of the Plant Site would have significantly greater potential to adversely affect significant aquatic functions.

The Redwood City Plant Site does have the potential for significant aquatic function if it is restored. However, EPA believes the only realistic likelihood for achieving the restoration of any significant portion of the Plant Site is through the implementation of a project that allows Cargill to develop the least environmentally sensitive portions of the Plant Site, while providing for the restoration of the remainder of the Plant Site as mitigation.

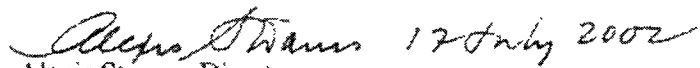
As you are aware, any Clean Water Act section 404 permit must comply with the 404(b)(1) Guidelines. EPA can offer the following guidance to Cargill as it seeks to develop a project that will comply with these Guidelines. Given their paucity of environmental functions, EPA does not consider the crystallizer beds to be aquatic resources of national importance. However, San Francisco Bay directly adjoins the Plant Site and is an aquatic resource of national importance. For Cargill to develop a permissible project, it will be essential to design its project so as to avoid significant adverse impacts to the functions of San Francisco Bay. Restoration of the remaining portions of the Plant Site will provide substantial opportunities to protect and enhance San Francisco Bay's aquatic functions - both minimizing the impacts to the San Francisco Bay from Cargill's development and compensating for the loss of the potential for restoration of the crystallizers. The specifics of any such restoration effort will require careful planning so as to not conflict with other Bay area restoration efforts. However, a properly designed and coordinated restoration effort should provide a significant environmental gain to the functions of the San Francisco Bay ecosystem.

Cargill will, in addition, be required to demonstrate that its proposed project is the least environmentally damaging practicable alternative for purposes of the 404(b)(1) Guidelines. Until Cargill has a specific project proposal, EPA can only provide limited guidance with regard to this requirement. EPA has reviewed the Special Aquatic Habitat Assessment prepared by Wetlands Research Associates, Inc. for this property. We agree that within the levees surrounding the Plant Site as depicted in Figure 1 of the report, there are no areas that EPA would consider to be special aquatic sites as that term is defined in the 404(b)(1) Guidelines. A project proposal that does not involve discharges to special aquatic sites is not subject to the presumption of the existence of practicable alternatives that are less environmentally damaging to the aquatic ecosystem.

Beyond this threshold inquiry, further assessment of the practicability of alternatives must await Cargill's development of a project proposal. EPA urges Cargill to work closely with local land use planning authorities and relevant state regulatory agencies in the development of its proposal. Any redevelopment of the Plant Site will be a significant local and regional land use decision, particularly for Redwood City. Local planning constraints will almost certainly define the range of acceptable projects for the area in question, as well as assist in defining the relevant environmental impacts which will need to be assessed in weighing the alternatives available to Cargill.

I hope you find this guidance useful in developing your project proposal. If you have any questions, please contact me at (415) 972-3572.

Sincerely,


Alexis Strauss, Director
Water Division

cc: Lt Colonel O'Rourke